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Supreme Court, U.S.
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No. 84-14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

BOARD OF TRUSTEES OF THE ALLEN CHAPEL OF THE A.M.E. CHURCH, *et al.*,

Petitioners,

v.

BETTY J. GROGANS, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

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QUESTIONS PRESENTED

1. Where real property is donated by specific deed of trust in 1889 to named trustees for the benefit of a specific international, heirarchical, connectional Church denomination, may a Court quiet the title in favor of other individuals, acting as trustees of an independent religious sect, society, or denomination, organized in 1980, composed of dissident ex-members and non-members, without violating the First Amendment rights of the remaining faithful Church members?

2. May a State Court effectively terminate the beneficial, equitable interest to real estate owned since 1889 by an international, hierarchical, connectional Church denomination and transfer said interest to an independent religious sect, society or denomination organized in 1980, composed of dissident ex-members and non-members, when considerations of religious doctrine, internal church structure, and denominational practice form the basis of the determination?

3. May a State Court constitutionally adjudicate a Church property dispute involving an international, hierarchical, connectional Church, without actually adopting a "neutral principles of law" analysis?

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

Petitioners are the African Methodist Episcopal Church, Inc., a hierarchical religious corporation organized under the laws of the State of Pennsylvania, which has had a locally affiliated Church, Allen Chapel A.M.E. Church of Lancaster, Ohio, since 1869. They pray that a Writ of Certiorari issue to review the final judgment of the Supreme Court of the State of Ohio, dated March 8, 1984, which overruled Petitioners' Motion to Certify the Record for Review of the Judgment and Opinion, entered on November 4, 1983, of the Court of Appeals for Fairfield County, Ohio, the Fifth Ohio Appellate District. The Court of Appeals had affirmed the ruling of the trial Court that Respondents were the successors in interest to title to real property, to the original Trustees of the African Methodist Episcopal Church, named as grantees in a Deed from the City of Lancaster, Ohio, dated October 28, 1889.

Respondents are named individuals,[1] some of whom were dissident members of Petitioners' local Church, Allen Chapel A.M.E. Church of Lancaster, Ohio, and some of whom were non-members. These individuals organized an unincorporated association, as a non-denominational religious body, on September 23, 1980, under the name of Allen Chapel Church, leaving "A.M.E." out of its name. Respondents became adverse below by and through the named set of individuals as Trustees for the newly organized Allen Chapel Church.

OPINIONS BELOW

The original decision of the Court of Common Pleas of Fairfield County, Ohio, on the merits, was filed May 3, 1983, in Memorandum form and is reproduced in the Appendix at pages 1-6. The Common Pleas Court's Opinion was followed by a Judgment Entry on May 17, 1983, which is reproduced at page 7 of the Appendix.

The Opinion of the Court of Appeals of Fairfield County, Ohio, the Fifth Ohio Appellate District, was issued and filed November 4, 1983, is contained in the Appendix at pages 10-15, followed at page 14, by the Judgment Entry of said Court of Appeals dated November 4, 1983.

The final Judgment of the Supreme Court of the State of Ohio, dated March 8, 1984, which overruled Petitioners' Motion to Certify the Record for Review, is contained in the Appendix at page 17.

None of these Opinions, Memorandums and/or Decisions were reported, officially or unofficially.

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[1] The individual Respondents in addition to Betty J. Grogans are: Bonnie Hall, Mary Ball, Phyllis Hawkins, Mrs. F. Stanley Carlisle, Mr. F. Stanley Carlisle, Mrs. Frances McKinley, The Negro Citizens of Lancaster, Ohio, and The Allen Chapel Church.

JURISDICTION

The final judgment of the Supreme Court of the State of Ohio was entered March 8, 1984, and this petition for a writ of certiorari will be filed on or before July 7, 1984, the date to which this Honorable Court permitted an extension of time to file by order of June 8, 1984. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

A. First Amendment to the United States Constitution

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . ."

B. Fourteenth Amendment to the United States Constitution

> " . . . nor shall any such State . . . deny to any person within its jurisdiction the equal protection of the laws."

C. Article I Section 7 of the Constitution of the State of Ohio:

Rights of Conscience; the Necessity of Religion and Knowledge

> "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted.
>
> * * *
>
> Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship . . . ."

D. Ohio Revised Code, Chapter 53:

Section 5303.03 Petition in Action for Land

> "In an action for the recovery of real property, it is sufficient if the plaintiff states in his petition that he has a legal estate therein and is entitled to the possession thereof, describing it with such certainty as to identify the property, and that the defendant unlawfully keeps him out of the possession. It is not necessary to state how the plaintiff's estate or ownership is derived."

STATEMENT OF THE CASE

Petitioners originally brought an action in the Common Pleas Court of Fairfield County, Ohio, under Section 5303.03, Ohio Revised Code, to recover real estate located in Lancaster, Fairfield County, Ohio, possession of which had been unlawfully withheld from them by Respondents. The origin of Petitioners' claim is an 1889 deed of trust, which specifically granted said real estate to the "Trustees of the African Methodist Episcopal Church, their Successors and Assigns, Forever." (See PX. 15) Since 1869, the property was known continuously throughout the community and through the A.M.E. heirarchy as the Allen Chapel of the African Methodist Episcopal Church, until September, 1980, when Respondents first established the Allen Chapel Church, their non-denominational church, composed of ex-members and non-members of the A.M.E. congregation. Respondents counterclaimed to quiet title in its name, although their church was newly organized and there remained a loyal contingent of A.M.E. parishioners, who sought their continuing right to practice their religion within the precepts, guidelines and Discipline of the African Methodist Episcopal Church.

The record below reflects that the A.M.E. Church was founded by Bishop Richard Allen and Bishop Francis Asbury in the late 1700's, and was formally organized as a denomina-

tion at Baltimore, Maryland, in 1816. (Pl. Ex. 1, *The Book of Discipline of the African Methodist Episcopal Church*, hereinafter The Discipline). This denomination has since spread across the western hemisphere and into Africa.

Over one hundred years ago, the black citizens who had settled in and around Lancaster, Ohio, became affiliated with the A.M.E. Church and began following The Discipline of the denomination. The A.M.E. Church is an international, connectional hierarchy with very specific jurisdictional, ecclesiastical and procedural law, rules and regulations. (See PX. 1) In 1869, the A.M.E. parishioners were financially able to construct a church building and at that time the City of Lancaster was trustee to real estate donated and dedicated in trust to that religious "society that will obligate themselves to erect a house of public worship . . ." thereon. (See DX. C)

The A.M.E. parishioners (not Respondents) completed the building on the real estate in question and in 1889 the City of Lancaster gave its specific deed *in trust* to the "Trustees of the African Methodist Episcopal Church, their successors and assigns forever." (PX. 15) This A.M.E. Church was named Allen Chapel after the founder of the denomination, Bishop Richard Allen, and continuously and uninterruptedly operated as an A.M.E. Church until October 26, 1980. (Tr. pp. 129-132, 182)

The testimony and evidence presented by both Petitioners and Respondents below established that the A.M.E. Church is and has always been a connectional, hierarchical denomination and that the Allen Chapel of the A.M.E. Church had a history of continuous allegiance to the A.M.E. Church society for well over one hundred years. The indicia of this participation within the hierarchy included direct testimony and documentation to the effect that the hierarchy annually appointed the pastors to serve at the Allen Chapel A.M.E. Church; that said Church paid annual dues and made contributions to the educational funds of the national hierarchy; sent delegates to the Annual Conferences within the Third Episcopal District and otherwise participated in ecclestical governing processes and organizations; submitted to the decisions of the Bishop of the Third

Episcopal District, who presides over the South Ohio Annual Conference, within which the said local church was located; submitted reports on activities, finances and all related matters to the Annual Conference; and specifically fulfilled and observed the precepts, philosophy and Discipline of the faith. Further evidence established that the building in question bore the letters "A.M.E." above the entrance and the personal property located therein was stamped "A.M.E." as well.

The record below further discloses that the Allen Chapel A.M.E. Church permitted non-member "friends" to attend their services and participate in their religious methodology, but that these individuals were clearly designated "friends" and not members of the denomination. (See DX. B, a log book of members and "friends," *circa* 1952) The creation, in September, 1980, of the Allen Chapel Church, a non-denominational unincorporated association composed of these non-members and some dissident A.M.E. parishioners were documented at trial. The evidence further disclosed Respondents' actions in September, 1980, to gain control of the real estate, bar the pastor appointed by the A.M.E. Bishop, restrict the loyal A.M.E. parishioners' free exercise of their faith and Discipline, and otherwise expel those wishing to continue to practice their A.M.E. religious beliefs from that real estate specifically held in trust for use by those of the A.M.E. denomination.

The constitutional issues addressed by this Petition were first raised before the trial Court by Respondents' motion to dismiss petitioners' complaint which alleged in pertinent part:

> The U.S. Supreme Court in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1960) held that a determination of the relationship of a local church and a parent body should apply neutral principles of law.

The Petitioners' (Plaintiffs') Memorandum Contra Respondents' (Defendents') Motion to Dismiss and Trial Brief discussed at great length the constitutional issues limiting the civil Court inquiry and establishing the need for a "neutral principal

of law" analysis to determine the controversy between these parties. (See: Appendix pp. 32-44, for entire text.) The trial Court Memorandum rules upon these issues under Section II. (See: Appendix pp. 1-7.)

These matters were later briefed by the parties on appeal, and the Opinion of the Court of Appeals, reproduced at Appendix, pp. 10 to 15, contains reference to the constitutional limitations also under Section II.

On Petitioners' appeal to the Supreme Court of the State of Ohio, the Memorandum in Support of Jurisdiction asserted but one proposition of law, as follows:

> Where real property is donated by specific deed of trust to trustees on behalf of a specific religious sect, society or denomination, it is error to quiet title in favor of individuals acting as trustees of a different religious sect, society or denomination, where the termination of said specific beneficial interest of the former in favor of the latter sect, society or denomination involves a weighing of differing religious values, doctrines and beliefs in violation of the First Amendment to the United States Constitution and Article I Section 7 of the Constitution of the State of Ohio.

That Court's refusal to accept jurisdiction to review the decisions below constituted a final adverse ruling on these matters.

REASONS FOR ALLOWANCE OF THE WRIT

A. The action of the Supreme Court of Ohio and the Lower Court decisions thereunder contravene the First and Fourteenth Amendments to the United States Constitution as constituting improper inquiries into matters of ecclesiastical cognizance and polity, and as such represent improper judicial interference with decisions of the highest authorities of a hierarchical church.

This case presents the most compelling of reasons for allowing the writ herein requested. The trial Court's decision

was erroneously based upon a weighing of the "interests of the parties," (Appendix at p. 5) built upon an unfounded and wrongful premise that a schism existed between two factions of one church; i.e. Petitioners as the parent church and Respondents as the local church. The Ohio Courts' reach their conclusions by specifically weighing these "interests" of the parties in terms of doctrine, faith, and religion, culminating in an improper infringement upon the authority of the hierarchy of an international connectional denomination.

Primary to the need for review is the fact that there exists but one African Methodist Episcopal denomination worldwide, which has existed as a consistant form of theological principal since the end of the eighteenth century. Respondents espoused a desire to pursue a non-denominational religious brotherhood, free of what they felt to be the confines of the strict religious doctrinal philosophy and ecclesiastical authority of the African Methodist Episcopal Church. Although those of the individual Respondents, who withdrew from the connectional, heirarchical Church that is the A.M.E. denomination had a right to do so, they had no legal right to take title to the real estate specifically trusted for the benefit of the African Methodist Episcopal Church. Those Respondents also had the right to form a new non-denominational organization with those Respondents, who by their stated admission never belonged to the A.M.E. Church. These Respondents could not claim any greater interest in real estate by virtue of their new church organization, their different beliefs, values or method of theology.

The First Amendment to the United States Constitution and Article I Section 7 of the Constitution of the State of Ohio clearly preclude judicial interference into the religious experience and expression of any one sect, society or denomination. Those provisions presented the Ohio Courts with an absolute bar from resolving controversies involving religious doctrine between various religious sects, societies and/or denominations. *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666; *Serbian Eastern Orthodox Diocese, etc.* v. *Milivojovich*, 426 U.S. 696, 96 S. Ct. 2372 (1976); *Jones* v. *Wolf*, 443 U.S. 595, 99 S. Ct. 3020 (1979); *Presbyterian Church in the United*

States v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S. Ct. 601 (1969).

An examination of the decisions below reveals that these principals, long established by this Honorable Court, were neglected by the Ohio Courts, when they permitted the recent complaints of some dissenting members and non-members of the A.M.E. Church, who wished to become a non-denominational organization, to form the basis of the Court's decisions.

B. The decisions of the Ohio Courts failed to apply "neutral principals of law" to the analysis of the title to real property gifted by specific deed of trust to Trustees of the African Methodist Episcopal Church, an international, connectional, heirarchical religious denomination.

As indicated above, this Honorable Court has established standards of analysis by which civil Courts may proceed to consider purely civil disputes, such as ownership of real estate, involving religious authority without contravening the First Amendment. This must be approached carefully, however, and requires an application of "neutral principals of law." The determination of ownership in a case such as this presents deliberate examination of trust and real estate law without reference to considerations of faith, doctrine, or ecclesiastical differences. *Jones* v. *Wolf*, *supra*.

The trial Court's errors noted under Section A above were compounded by the Court of Appeals' decision herein that the deed of trust dated 1889 "conveyed the land to the local Allen Chapel to be held in trust by local residents," (Appendix p. 13) and that the individual Respondents could, therefore, hold title as trustees. The specific deed of trust herein granted this land, not to the Allen Chapel Church (created in 1980), but to the trustees for the African Methodist Episcopal Church. This language is unambiguous. There is but one African Methodist Episcopal Church and Respondents do not claim to be that church, to worship within that denomination, or to participate in that society, sect or religious doctrine. This case differs from others which have been accepted for review by this Honorable

Court due to the existence of a specific deed of trust, which names a specific beneficiary, the identification of which was as clear and obvious in 1980 as it was in 1889.

The decision herein should have been based upon neutral principles of Ohio's trust laws, not a weighing of equities, or a determination of deviation-from-doctrine, or the degree of financial support from the A.M.E. Church to the local parish. Those concerns were immaterial and irrelevant to the proper evaluation of the property dispute, and their consideration amounts to a violation of both Ohio and United States constitutional restraints.

Under Ohio law an intervivos trust for the benefit of third parties is created upon execution and delivery to a trustee of a deed or other instrument evincing a trust purpose. *Cleveland Trust Co.* v. *White,* 58 Ohio App. 339, 9 Ohio Ops. 239, *aff'd* 134 Ohio St. 1, 11 Ohio Ops. 377 (1937). Thus the 1814 transfer by deed to the City of Lancaster, Ohio, of several parcels of land for the benefit of "any society that will obligate themselves to erect a house of public worship . . ." created a trust for a specific purpose. Transfer of title was complete upon delivery and filing of a deed. *Cleveland Trust Co.* v. *White, supra.*

In the same fashion, it was the African Methodist Episcopal society which built said "house of public worship," and upon completion of the condition precedent, title was to pass to said society. The deed in question here, dated 1889, completed the transaction by granting, from the City of Lancaster, Ohio, to the African Methodist Episcopal Church the subject lands. In 1889, other religious sects, societies and/or denominations existed throughout Ohio, but by virtue of the specific deed to the trustees of the African Methodist Episcopal society, the City of Lancaster, Ohio could not have intended to transfer title to this real estate to a then non-existent, non-denominational sect or society. Those individuals who seek to continue the practice of the A.M.E. theological doctrine, were the intended beneficiaries of the transfer in 1889 and should not be displaced by non-members, whom they permitted to share, as "friends," the house of worship constructed on this real estate, and consecrated to the A.M.E. doctrine.

Likewise, the deed of trust named specific trustees, to continue indefinitely through successors and assigns. It was stipulated below that no assignment was made of the legal estate by deed or other instrument, so that legal title could only pass by succession. This process occurred through the Discipline of the A.M.E. Church denomination throughout the time between the original grant and trial. At trial, the members of the Board of Trustees of the Annual Conference testified that they were the trustees for the African Methodist Episcopal Church, having control over all real estate in the Third Episcopal District, which includes the real estate at issue in this case.

Under Ohio law, a trust does not fail for want of a trustee, once a valid trust has been created, because the Courts have statutory authority to appoint a trustee if it becomes necessary to maintain an operative trust. *Francis* v. *Anthony,* 46 Ohio App. 121 (Stark 1933); see also Section 2109.26, Ohio Revised Code, on the subject of filling a trustee vacancy. Although Petitioner argued that the African Methodist Episcopal Church Discipline, doctrine, custom and usage dictates that the Board of Trustees of the Third Episcopal District were the proper successor trustees at time of trial, neutral principals of Ohio law dictate that the trust could not fail even upon a finding contrary to that argument. The trial Court had no authority to displace the proper beneficiary, the African Methodist Church. At no time relevant hereto, did the holder of the beneficial, equitable interest, the A.M.E. Church, appoint the individual Respondents, Stanley Carlisle, Betty Grogans or Mary Ball to be successor trustees for their interest, and the record does not contain any evidence remotely supportive of such a finding. The Ohio Courts failed to observe the requisite objectivity to determine these issues in neutral manner.

C. The Decisions of the Ohio Courts below resolving Church disputed property rights are in direct conflict with and adverse to the Court Decisions of other States and Countries; and, also are contrary to and misapply decisions of this Court in construing First Amendment Guarantees imposed on the various States by the Fourteenth Amendment.

Petitioners strongly urge, that the most important and persuasive reason that impels this Court to grant the requested

writ is, that the finality of the decisions by the Ohio Courts aborts Petitioners' First Amendment guarantees, imposed on the various States by the Fourteenth Amendment, and are in direct conflict with and adverse to decisions of other States, and are contrary to and misapply a long line of decisions by this Court.

Petitioners are mindful that the only religious controversies which both Federal and State Courts are permitted to resolve, because of the restraints of the First and Fourteenth Amendments, are those which involve property rights; and, when judicial intervention is permitted to resolve church disputes over property rights, as previously noted herein, the Courts' decisions must be void of examination of ecclesiastical doctrines and rooted in "neutral principles of law." *Watson* v. *Jones, Supra, Jones* v. *Wolf, Supra, Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, Supra, Serbian Eastern Orthodox Diocese, etc.* v. *Milivojovich, Supra;* SEE ALSO—NOTE, Judicial Intervention in Disputes over use of Church Property, *75 Harv. L.Rev. 1142 (1962);* COMMENT, Judicial Intervention in Church Property Disputes—Some Constitutional Considerations, *74 Yale L.J. 1113 (1965).*

However, Petitioners have a right to expect, demand and receive "UNIFORMITY" and "EQUAL PROTECTION OF THE LAW" among the various States in the preservation and enforcement of its Constitutional guarantees under the First Amendment, which are imposed upon the various States by the Fourteenth Amendment. Likewise, Petitioners are constrained to insist that the State Courts of Ohio, and any and all other Courts of this Country, follow and adhere to decisions of this Honorable Court in deciding how "Church disputed property rights" are resolved.

1. *The Decisions of the Ohio Courts are in Conflict with and Adverse to the Court Decisions of other States and Countries in the Application of First Amendment Guarantees involving Church Property Disputes.*

An exhaustive listing of all State Court decisions, which have reached similiar conclusions to the decisions of this Court

regarding judicial intervention in Church disputes and how property rights are resolved, contra to the manner in which the Ohio Courts below resolved property rights in the subject case, would burden this request for a Writ; however, some typical examples are cited, as follows:

(1) ARKANSAS—*Holiman v. Dovers, 236 Ark. 211, 366 S.W. 2d 197 (1963)*

(Landmark Arkansas case on Court intervention in Church disputes)

(2) KENTUCKY—*Clay v. Crawford, 298 Ky. 654, 183 S. W. 2d 797 (1944)*

(A case with facts similiar to the subject case—part of a local congregation asserted its independence from the African Methodist Episcopal Church hierarchy, but the Court awarded the property to the minority faction loyal to the A. M. E. Church, because the local had long history of participation in A. M. E. Doctrines.)

(3) LOUISIANA—*Fluker Community Church v. F. B. Hitchens, et al., La., 419 So. 2d 445 (1982)*

(Supreme Court of Lousiana awarded property to General A. M. E. Church applying "netural principles of law", wherein a local Church had disaffiliated from the international heirarchial organization, and where the Deed of Sale conveyed to "Fluker Chapel A. M. E. Church, Fluker, Louisiana".)

(4) SOUTH AFRICA—*African Methodist Episcopal Church, et al v. T. V. Khumalo and Others, Case No. 50326, (1984)* Supreme Court of South Africa, Witwatersrand Local Division. (Appendix pages 27 thru 50)

(The Supreme Court of South Africa used two parables—"growing plants with bunches of grapes" and "Passengers on coaches of a train"—in awarding property to the A.M.E. Church as against dissident members of the Church. That Court resolved "This .... civil dispute between two groups .... to .... rights to .... property,"

consistent with opinions of Courts of the United States, and consistent with the opinions of this Court, in resolving Church property disputes in purely secular terms without resolving underlying controversies over religious doctrine and practice.)

This Court should grant certiorari to insure that the Peitioners' First Amendment rights can be exercised in Ohio as freely and unfettered as they can be exercised in other States. The decisions of the Ohio Courts have abridged this opportunity and it will be lost eternally if the requested writ is not granted.

2. *The Ohio Courts decisions below are in Conflict with and Misapply Decisions of This Court in Applying "Neutral Principles of Law" in solving Church Property Disputes.*

The variance contained in the opinion of the Ohio Courts, in this case, with established decisions of this Court, denies Petitioners "Equal Protection of the Law" in the exercise of their constitutional right of the free exercise of religion, without State interference, by judicial action. *Kreshik v. St. Nicholas Cathedral, 363 U.S. 190, 80 S. Ct. 1037, 4 L. Ed. 2d 1140 (1960).*

This Court, in a long line of consistent decisions spanning more than 100 years, from *Watson v. Jones, Supra,* in 1872, down to *Jones v. Wolf, Supra,* in 1979, has enjoined civil courts from jeopardizing First Amendment values in deciding Church Property disputes when they apply techniques which involve consideration of religious doctrine and polity.

Some of this Court's more notable and profound decisions in this regard, in addition to the two cited above, are:

(1) *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 73 S. Ct. 143, 97 L. Ed. 120 (1952).*

(2) *Kreshik v. St. Nicholas Cathedral, Supra*

(3) *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Prebyterian Church, Supra*

(4) *Maryland and Virignia Churches v. Sharpsburg Church, 396 U.S. 367, 90 S. Ct. 499, 24 L. Ed. 2d 582 (1970)*

(5) *Serbian Eastern Orthodox Diocese, etc v. Milivojevich, Supra*

The Ohio Court's decision in this case denied, by judicial action, the A.M.E. Church's legitimate representative, the presiding Bishop of the Third Episcopal District in which this property is situated, Bishop Vinton R. Anderson, the "ecclesiastical right" to control Church property, in contravention of the constitutional rule laid down by this Court in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, Supra*, which rule was extended to "judicial action" by this Court in *Kreshik v. St. Nicholas Cathedral, Supra.*

The need for uniformity among the various State jurisdictions insuring preservation of hallowed First Amendment rights, strongly suggests that this Court should grant the requested writ, because, in this case, the Ohio Court purportedly applied "netural principles of law" in deciding the "true congregation" which was entitled to the property, as the Court noted was the implication in the Georgia case of *Jones v. Wolf, Supra.* However this Court noted in *Wolf* that the process of identifying the "true congregation" was saturated with the First Amendment requirement of deference to the heirarchial Church's determination of that fact.

In the *Wolf* case a Presbyterial Commission was the "legitimate church representative" which made the determination of which of the local factions was the "true congregation", and the Georgia Courts denied that group's Petition for declaratory and injunctive relief. This Court granted certiorari.

Similarly to the *Wolf* case, the Ohio Courts in this case denied Petitioners' request for recovery of property unlawfully held by a local church faction. (See Appendix for these unreported decisions at pp. 1-17.) Also similar to the *Wolf* case,

the Ohio Courts purportedly applied "neutral principles of law", and decided that the defecting faction was the "true congregation" entitled to the property, in contravention to the hierarchal A.M.E. Church's legitimate representative's, Bishop Vinton R. Anderson, determination that the local defecting group was not the "true congregation".

This Court should grant certiorari here as it did in *Wolf*. The Ohio Court here misapplied the constitutional rule of "in deference to ecclesiastical determination, by the legitimate representative of a hierarchial church body, to decide the true congregation in church split disputes", as the Georgia Courts did in *Wolf*.

Should the decisions by the Courts of Ohio, which are contrary to and misapply rules laid down by this Court, enjoy any less exemption from review by this Court, than the Courts of Georgia, New York, Illinois and Maryland? The obvious answer is—NO! This Court should grant certiorari here.

CONCLUSION

For the foregoing reasons, it is submitted that a writ of certiorari should issue to review the judgment of the Supreme Court of the State of Ohio.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard M. Stein, attorney for the Board of Trustees of the Allen Chapel of the A.M.E. Church and the African Methodist Episcopal Church, Inc., petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 6th day of July, 1984, I served copies of the petition for certiorari to the Supreme Court of the United States by mailing in a secure wrapper, post-paid, to counsel for respondents as follows:

ROGER H. NORMAN, ESQ.
109 East Main Street
Lancaster, Ohio 43130
Attorney for Respondents

RICHARD M. STEIN
Richard M. Stein

CORRECTED COPY

Supreme Court, U.S.
FILED
JUL 6 1984
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 84-14

BOARD OF TRUSTEES OF THE ALLEN CHAPEL OF THE A.M.E. CHURCH, *et al.*,

Petitioners,

v.

BETTY J. GROGANS, *et al.*,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

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**IN THE COURT OF COMMON PLEAS—
FAIRFIELD COUNTY, OHIO**

Case No. 50326

BOARD OF TRUSTEES OF THE A.M.E. CHAPEL
OF THE A.M.E. CHURCH

Plaintiff,

VS.

BETTY GROGAN, *et al.,*

Defendants.

(Filed May 3, 1983)

MEMORANDUM

This matter comes on for consideration on the Complaint of the Plaintiff, Board of Trustees of the Allen Chapel of the A.M.E. Church, filed against seven named individuals and the "Negro Citizens of Lancaster, Ohio" seeking recovery of certain real estate and $10,000.00 for the wrongful use and possession of said real estate. Ruling on the Motion for Preliminary Injunction was reserved until after the final hearing, as was ruling on Defendant's Motion to Dismiss.

The defendants have named "Allen Chapel" as a party defendants and asked that title be quieted in that name. The defendant, Allen Chapel, denies plaintiff's existence, and generally denies all allegations of Plaintiff's Complaint. There is no answer filed on behalf of other defendants, though the "defendants" asked for relief under the Counter-claim and the existence of "Allen Chapel Church" prior to October 26, 1980, and therefore their capacity as a real party in interest.

By an agreed entry, on application plaintiff (whose existence defendants deny), it was ordered that the African Methodist Episcopal Church, Inc. be joined as a party, but it is not

specified whether it is to be a party plaintiff or a party defendant, nor is it clear whether this new party joins in the Complaint, or Answer and/or Counterclaim, or either.

There being no objections to the pleadings in their present state and it being undisputed that there are and were at the time of the initiation of this law suit no Trustees of the Allen Chapel of the A.M.E. Church, the Court will proceed with its analysis on the assumption that A.M.E. Church, Inc. stands in place of the original plaintiff and that "Allen Chapel Church" and the defendants named in the Complaint are united in interest as defendants.

I. Ultimately to be decided in this case is whether a parent church, the A.M.E. Church, Inc., or the local church, the Allen Chapel Church, is to have title to certain real estate and church property, described in the Complaint.

A brief search of the history of both the local and parent churches is in order. Initially it should be noted that the African Methodist Episcopal Church, just as the Methodist Church, is hierarchial in general church organization and doctrine. However, that fact alone in not controlling with respect to issues in this case. *Independent Methodist Episcopal Church v Davis,* 137 Conn 1 (1950) and *African Methodist Episcopal Church v Jenkins,* 139 Conn 418 (1953).

1814 was the year of the incipient event of this lawsuit. It was then that Emanuel Carpenter granted the City three lots to be conveyed to "any society" that would "erect a house of public worship". A building was placed there and in 1889 the City of Lancaster saw it proper under its trust to make a grant to three local residents, "John C. Virey, George A. Moss and Louisa C. Strauder, as Trustees of the African Methodist Episcopal Church and their successors and assigns."

Significantly, no further conveyances have been made, though relatively recently efforts have been made by the parent church to secure a conveyance of the real estate to its trustees. Currently the parent church has no legal title such as would enable it to convey any interest in real estate in question.

As demonstrated by Mrs. Carlisle, the Allen Chapel of the A.M.E. Church has retained the name throughout its history and in places it may still be found in or on the Church. The Church has been used as a place of worship for many Black citizens of this community, regardless of denominational affiliations. In this respect the church closely resembles one of a congregational make up rather than heirarchial.

The congregation, did over the years take part in and recognize the parent church and its meetings and conferences. Contributions were made to the parent church. It in turn furnished ministers, Sunday literature, specific rituals and celebrations. On occasion, it would be apparent that the minister's loyalties were divided between the interests of the local people and the parent church wishing increased contributions. Disputes over the use of church monies were not uncommon nor pleasant.

Some of these same ministers engaged in conduct against the local church that it was insulting if not simply unlawful. The Chapel's furniture and cookware was removed by one minister for use in his restaurant. The Chapel's organ removed by another. Witnesses called by the Plaintiff from the parent organization knew little if anything of these incidents indicating that they were far removed from the concerns of the local congregation.

The building of the Allen Chapel was built through the efforts of the local people as is custom of local congregations.

In 1980 Pastor Jenkins asked for a deed to the property to vest it in the name of the parent church. This was refused and subsequent conflicts with the local pastor at that time, Pastor Harris, led to his ouster and the formation of an independent non-denominational congregation under the name, Allen Chapel Church, with Betty Grogan, Mary Ball and Stanley Carlisle as successor trustees. The association with the A.M.E. Church was terminated by letter with all but about four members signing it. The Book of Discipline was not followed in any of the foregoing procedures. There are presently no local A.M.E. trustees.

II

Presbyterian Church in United States v Mary Elizabeth Blue Hall Memorial Presbyterian Church, 393 U S 440 (1969) is perhaps the most definitive statement on the law relative to disputes over church property. The 1st Amendment, applied to the States through the 14th Amendment, may now through the so called "departure from doctrine" exception. "Neutral principles" are to be followed.

Where there is, as here, at least nominally a heirarchial relationship, the Courts must examine the totality of circumstances to discover where title to church property rightfully belongs.

An examination of the formal title to the property shows that throughout the history of this congregation, it was the intent of the founders and those who followed to keep the property in the names of the local trustees. Given the congregational make-up of the church over the years and the use of the Chapel by non-A.M.E. adherents, it would seem apparent that the title would be held by local trustees rather than by trustees of the A.M.E. Church.

Thus, when the congregation split with the A.M.E. Church, Inc., it is far more reasonable to conclude from a title standpoint that the successor trustees were those who remained worshipping at the Allen Chapel and not any unnamed and unknown trustees of the parent A.M.E. Church, Inc. This intent is clearly seen in the rejected attempt of the parent organization to have title placed in its name prior to the split. *Serbian Orthodox Church Congregation of St. Demetrius v. Keleman*, 21 Ohio St. 2 d 154, 400 U S 827 (1970), though not on all fours with this case, strongly suggests this result.

The *Keleman* Case does not indicate that a local church through a part of hierarchially organized general church formally, may nonetheless be congregationally governed with regards to local property matters.

There was ample testimony initially as to the diverse or congregational nature of the membership of the local church.

There was very little financial control by the parent church over the local and those dues that were exacted from the local congregation through its agent, the pastor, were taken only with resistance and a struggle. This also appears to have been a one-way route with benefits running to the parent group, but no benefits coming back in return. Certainly all improvements and repairs to the property were brought about locally and with no assistance from the parent.

Conversely the parent church seemed uninformed and unconcerned about the financial affairs of the local church and the condition of its structures.

The history of the founding and the course of local control over the Allen Chapel argue strongly for an independent local church. Though pastors were appointed by the parent, objectives to them were honored by the parent when the issue was forced by the local congregation. The procedures called for in the Book of Discipline for the management of church affairs rarely seem to have been followed by the local congregation nor does an adherence to such procedures seem to have been required until the inception of this lawsuit.

The indicia of local ownership and control in this case, as in the 5th District Court of Appeals case of *Holiness Church of Bremen, Ohio v Bell,* Case No. 4-CA-80, are many and substantial, whereas the instances of control and concern by the parent group are few and merely incidental in character.

To sum up and weigh the interest of the parties, the A.M.E. Church, Inc. certainly has a vital interest in the welfare of its parent organization. That it may vouchsafe simply by having title to its properties properly and legally placed in its name. The loss of revenues from the defendant church would be inconsequential compared to the loss the local congregation would suffer by an adverse ruling.

Simply stated, an active, vital church would be emptied and later, maybe, sold to plaintiff's profit, and that is the same property that was once locally owned and improved and deeded to a local congregation, which had only remote and incidental superintendence by the A.M.E. Church. To put this

congregation, many of those families have attended there for generations, out of its house of worship, would not only be grossly inequitable but contrary to all "neutral principles of law" discussed in the article of "Property Rights—Church Property", 52 ALR 3rd 311.

For the above reasons and for the reasons capably set out in defendant's briefs, the relief sought by plaintiffs should be denied and that sought by defendants should be granted, exclusive of attorney's fees.

Cost to Plaintiffs

Counsel for Plaintiff may prepare an entry in accordance with the above.

JOHN D. MARTIN

John D. Martin, Judge
Court of Common Peas—
Fairfield County, Ohio

R. M. STEIN
DOVEY ROUNDTREE
ROGER NORMAN

IN THE COURT OF COMMON PLEAS,
FAIRFIELD COUNTY, OHIO

Case No. 503 26

BOARD OF TRUSTEES OF THE A.M.E. CHAPEL
OF THE A.M.E. CHURCH

Plaintiff,

VS.

BETTY J. GROGAN, *et al.*,

Defendants.

Judge Martin

JUDGMENT ENTRY

In accordance with Local Rule 1.5, it appearing to the Court that Plaintiff, although directed by this Court's Memorandum of May 3, 1983, has failed to prepare an Entry in accordance with said Memorandum, the following Judgment Entry is hereby adopted by the Court.

It appearing to the Court from the pleadings and the evidence: that the African Methodist Episcopal Church, Inc., a.k.a. African Methodist Episcopal Church, was joined to this action, that it voluntarily submitted to this Court's jurisdiction as a party Plaintiff; further that it appears from the evidence presented by the said African Methodist Episcopal Church, Inc. from their Discipline that it is the superior or parent body to Plaintiff Trustees,

It is hereby Ordered, Adjudged and Decreed that the African Methodist Episcopal Church, Inc. was joined as a party Plaintiff.

It further appearing for the reasons contained in this Court's Memorandum of May 3, 1983, that Plaintiff's Complaint is not well taken and that Plaintiff, the African Methodist Episcopal Church, Inc. has ratified said Complaint.

It is Ordered, Adjudged and Decreed that the Complaint be dismissed with prejudice.

It further appearing that for the reasons contained in this Court's Memorandum of May 3, 1983, that the Defendants, Stanley Carlisle, Betty Grogan and Mary Ball, Trustees of the Allen Chapel Church (non-denominational) are the successor trustees to John C. Viney, Louisa Strauders and George Moss, the grantees in a deed from the City of Lancaster, Ohio, as recorded in Deed Volume 65, page 638 of the Deed Records of Fairfield County Recorder's Office,

It is Ordered, Adjudged and Decreed that the title to the following described real estate be and is hereby quieted in the names of Stanley Carlisle, Betty Grogan and Mary Ball as Trustees of the Allen Chapel Church (a non-denominational church) as successor trustees to John C. Viney, Louisa Strauders and George Moss under the Deed Recorders as against the Board of Trustees of the A.M.E. Chapel of the A.M.E. Church and the African Methodist Episcopal Church, Inc.:

> Situated in the County of Fairfield, in the State of Ohio, and in the City of Lancaster and bounded and described as follows:
>
> TRACT I. Being Lot Number Two Hundred Eighty-two (282) excepting therefrom a strip of land ten (10) feet wide off of the North side of said Lot 282 the entire length thereof.

TRACT II. A strip off of the North side of Lot 283 about twelve feet wide, being that portion of Lot 283 that is not used or taken up for street purposes, to-wit, Walnut Street.

Plaintiffs to pay the cost of this proceeding.

_____

JUDGE

APPROVED:

_____

ROGER H. NORMAN
Attorney for Defendants.

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO FIFTH APPELLATE DISTRICT

BOARD OF TRUSTEES OF THE ALLEN CHAPEL OF THE A.M.E. CHURCH
Plaintiff-Appellant

-vs-

BETTY J. GROGANS, *et al.*,
Defendants-Appellees

JUDGES:
HON. NORMAN J. PUTMAN, P.J.
HON. JOHN R. MILLIGAN, J.
HON. EARLE E. WISE, J.

OPINION

Case No. 29-CA-83

Decided: _____

Appearances:

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Counsel for Plaintiff-Appellant

ROGER NORMAN
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Lancaster, Ohio 43130

Counsel for Defendants-Appellees

MILLIGAN, J.

QUIET TITLE—CHURCH PROPERTY—GRANTOR'S INTENT

This action was brought by the Board of Trustees of the Allen Chapel of the African Methodist Episcopal Church, Inc. (hereinafter referred to as the National A.M.E.) to recover possession of certain real estate and $10,000 in damages. The defendants Allen Chapel, a local congregation, and its trustees filed a counterclaim to quiet title to the real estate in question.

The Fairfield County Common Pleas Court dismissed plaintiff's complaint and entered judgment on the counterclaim quieting title in the name of the defendants, Stanley Carlisle, Betty Grogans, and Mary Bail as trustees. The trial court based its decision on the intent of the original grantors to vest formal title to the real estate in the local trustees for the local Allen Chapel Church. The National A.M.E. appeals.

Evidnece at trial trailed the history of both the local and national church. The African Methodist Episcopal denomination began in 1787 as a society separate from the Methodist Church. A.M.E. churches began to form in different areas of the country. Although these churches united to form a connection at a general conference in 1816, the National A.M.E. Church was not formerly incorporated until 1933.

In 1869, long prior to national incorporation by the A.M.E., people of the African Methodist Episcopal denomination formed a church and built a chapel on the real estate in question--the present Allen Chapel. The City of Lancaster was owner-trustee of the real estate which had been dedicated to any religious society that would construct a house for public worship. In 1889, twenty years after the church as built, the town of Lancaster deeded the real estate to the local trustees of the African Methodist Episcopal Church.

Although it made a significant effort in 1981 to obtain a conveyance, the national church was unable to secure a deed to the real estate.

There is some evidence that the local church operated, to a limited degree, within the hierarchical structure of the National A.M.E. However, there is no evidence showing any relationship between the local church and the national church at the time the real estate was deeded. Nor is there any transfer by deed, or otherwise, from the original trustees or their successors to the National A.M.E.

Appellant assigns three errors:

ASSIGNMENT OF ERROR NO. I

THE TRIAL COURT ERRED AS A MATTER OF LAW IN DETERMINING THAT THREE NON-MEMBERS OF THE AFRICAN METHODIST EPISCOPAL CHURCH DENOMINATION CAN BE SUCCESSOR TRUSTEES TO THE AFRICAN METHODIST EPISCOPAL CHURCH AND IN GRANTING THOSE INDIVIDUALS TITLE TO REAL ESTATE ORIGINALLY HELD SPECIFICALLY BY DEED OF TRUST FOR THE AFRICAN METHODIST CHURCH.

ASSIGNMENT OF ERROR II

ALTHOUGH INDIVIDUALS HAVE A RIGHT TO WITHDRAW FROM A CONNECTIONAL HIERARCHIAL (SIC) RELIGIOUS SOCIETY AND FORM NEW SOCIETIES WITH OTHERS, THEY ARE NOT ENDOWED BY LAW WITH THE RIGHT TO TAKE TITLE TO REAL OR PERSONAL PROPERTY CONSECRATED TO THE CONNECTIONAL SOCIETY, AND THE TRIAL COURT ERRED IN PERMITTING THE MAJORITY FACTION WHO WITHDREW FROM THE AME CHURCH TO TAKE AND RETAIN THE REAL ESTATE AT ISSUE THERE.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED AS A MATTER OF LAW IN NOT DETERMINING THAT THE ALLEN CHAPEL AME CHURCH IS A PART OF THE AFRICAN METHODIST EPISCOPAL CHURCH HEIRARCHY (SIC) AND CONNECTION AND THAT THE REAL ESTATE IN ISSUE THEREFORE IS STILL HELD IN TRUST FOR THE CURRENT TRUSTEES, THE BOARD OF THE ANNUAL CONFERENCE, AND AS SUCH THE DECISION BELOW IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

I

The appellant first challenges the decision that three local residents are owners in trust of the real estate.

We overrule the first assignment of error.

Plaintiff's own exhibit lists Betty Grogans and Mary Ball as trustees. The evidence demonstrates that all three are local residents and members of the local Allen Chapel.

The trial court found the original deed conveyed the land to the local Allen Chapel to be held in trust by local residents. While appellants established the existence of the Board of Trustees of the National A.M.E., none of those trustees are local residents. We agree.

II

Appellant's second assignment of error asserts that the named trustees and the local Allen Chapel congregation were a mere majority faction of the National A.M.E. who withdrew; they should not have been given title to the real estate.

The role of trial courts in deciding church controversies is narrow. A determination of property rights in this case may not be based on an interpretation of the internal structure of the

National A.M.E. and the relationship between the national and local churches within that structure. *Presbyterian Church v. Hull,* 393 U.S. 440 (1969); *Church v. Kelomen,* 21 Ohio St. 2d 154 (1970). This information may only be used to aide the trial court in determining the intent of the grantor at the time the land was gifted.

There was some evidence that the local church operated within the structure of the National A.M.E. There was also evidence of schism. For the most part, the local church retained its own identity. However, the record is totally lacking evidence that there was a relationship between the local and National A.M.E. at the time the property was deeded. The local church was formed and the property was deeded well in advance of incorporation by the National A.M.E.

The trial judge found that the real estate was deeded to the local congregation and local trustees and not to the National A.M.E. No transfer of title was ever made to the National A.M.E.

We overrule the second assignment of error.

III

Appellant finally argues that the land was deeded to the National A.M.E.; the local and national church are connected, and the real estate must therefore be held in trust for the national organization.

We have already stated that we agree with the trial court's interpretation of the deed. The trial court had before it evidence of the history of the two churches and was in a position to make a determination based on the evidence and upon the statements and testimony of the witnesses as to the intent of the grantor. That judgment is not against the weight of the evidence.

The third assignment of error is overruled.

For the foregoing reasons the three assigned error are overruled and the judgment of the Court of Common Pleas of Fairfield County is affirmed.

PUTMAN, P.J. and
WISE J. concur.

JOHN R. MILLIGAN

NORMAN J. PUTNAM

EARLE E. WISE

JUDGES

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO FIFTH APPELLATE DISTRICT

JUDGMENT ENTRY

CASE NO. 29-CA-83

BOARD OF TRUSTEES OF THE ALLEN CHAPEL OF THE A.M.E. CHURCH,
Plaintiff-Appellant

VS

BETTY J. GROGANS, *et al.*,
Defendants-Appellees

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Fairfield County, Ohio, is affirmed.

JOHN R. MILLIGAN

NORMAN J. PUTNUM

EARLE E. WISE

JUDGES

THE SUPREME COURT OF OHIO

1984 TERM
THE STATE OF OHIO,
CITY OF COLUMBUS.
TO WIT: FEBRUARY 22, 1984

No. 83-1983

BOARD OF TRUSTEES OF THE ALLEN
CHAPEL OF THE A.M.E. CHURCH
Appellant

VS.

BETTY J. GROGANS *et al.*,
Appellees

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS (filed March 9, 1984) for Fairfield County TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Stein

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

WITNESS MY HAND AND
THE SEAL OF THE COURT

THIS 8TH DAY OF MARCH 1984

JAMES WM. KELLY

James Wm. Kelly
Clerk

SAM F. JENKINS

Sam F. Jenkins
Deputy

IN THE SUPREME COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

24.11.83

CASE NO. 4960/81

BEFORE: THE HONOURABLE MR. JUSTICE FLEMMING

—in the matter between:

AFRICAN METHODIST EPISCOPAL CHURCH

and

TIMOTHY VUSUMUZI KUMALO AND FOUR OTHERS

JUDGMENT

FLEMMING, J:

The Applicant in this matter has applied, firstly, for an order of a declaratory nature to the effect that it is the lessee of premises known as 1101 Mampuru Street, Orlando West. It, secondly, seeks an order ejecting the first and the second Respondents. It may be noted that the other Respondents were joined for technical reasons and never appeared to oppose the application. Thirdly, Applicant applied for the costs of this application. As far as this is concerned, I want to say right now that, to my mind, there is no justification for allowing the costs of the book called "Methodist Polity" on taxaction, or, from the point of view of relevancy and admissibility, the affidavits of the deponents, Brookins, McKinney and Cummings.

As far as the first prayer is concerned, the order is feasible only if it is shown with sufficient accuracy who the Applicant is. The 'Applicant', which tends to call itself A.M.E.C., was incorporated according to the law of the United States of America. If that is not so in the sense that it has not been proven to have constituted an incorporation, the Book of Discipline, which constitutes the constitution of the Church is such that, according to South African Law, that Church would be a legal person. In any event, then, there is at least one body with legal personality on the scene.

It does appear from this constitution that the Church—as I will call the central American body for the moment—has 18 districts, each with an Annual Conference and with other bodies, to which I need make no particular reference, such as District Conferences, Quarterly Conferences. Of more importance is that attached to an Annual Conference, there are a number of church conferences which, in the language of convenience, might as well be called the local churches. It can also be said, generally, that on each level, that is, from the local church level up to the body corporate in the United States, there is a Board of Trustees who are the caretakers of the financial affairs.

When coming then to the present application, the papers start off by saying, in para. 2, that the Applicant is a Church. It appears that the legal persons according to the Book of Discipline would in the case of the central body, have to be known as the Board of Incorporators or, alternatively—because they have the identical function—the Board of Trustees and, in fact, the Book of Discipline indicates that any litigation should be carried on in that name, that is, the Board of Incorporators, not in the A.M.E.C. name.

Going with that, however, in other words, with the statement that the Church as such is the Applicant, is attached only one resolution. That resolution was taken by the Trustees of the Western Transvaal Annual Conference. Or it may also mean that the Western Transvaal Annual Conference, as such, was

intended to be the Applicant. The third possiblity, of course, is that this more local conference, that is, the Annual Conference of the Western Transvaal, with the 15th District which covers this country and certain neighbouring areas, would have taken a resolution purporting to bind a higher body, that is, the basic body incorporated in America.

There is a fourth possible construction on the papers, and that is that one should look at pages 143 to 145 of the papers, which may be taken to mean that this Board of Incorporators have now, in some fashion, become entangled in the present litigation. It seems, on the one hand, to ratify what has already been done, but simultaneously, to condone the taking of steps on its behalf in the present proceedings.

Now, I Must say that neither the constitution, that is, the Church discipline, nor the papers, *inter alia,* in the sense in which I have indicated, are examples of undoubted clarity. My difficulty, however, goes further, and that is, that an order in terms of the first prayer will similarly not be an example of clarity. It is declared that the Applicant is the lessee, it is not yet known who the party to this contract really is, unless one knows who exactly the Applicant is. That I have indicated, some of the reasons for the conclusion that is not very clear.

I should take this further, however, to point out that one doubts whether the Third Respondent, the Johannesburg Municipality, ever intended to look to an American corporation for the payment of rentals.

If somewhere along the line somebody became the lessee, as was generally accepted by both parties, the indications according to the terms of the lease and the probabilities surrounding that, are that it was not intended that a body corporate which exists in the United States of America, that is, the Board of Incorporators of A.M.E.C., was the lessee. In fact, one doubts whether anybody intended that the Church Conference of the Orlando West Circuit, which is clearly the local congretaion's activity, purported to bind an American body, or thought itself to be doing so, or was understood by the

Municipality to be doing so. The indications are rather that it was intended that some local body, perhaps the local Church as I have called it, was the lessee.

Assessing this from the point of view of A.M.E.C.—and I use that word to refer to any American body—one notices no suggestion of any acts which are appropriate for a lessee, such as the paying of rentals by A.M.E.C., or the giving of notice, or taking custody of the lease documents.

It seems to me that apart from the fact that an order in terms of the first prayer will sustain the growth of further confusion—and no amendment was ever sought—I am not convinced that the United States body—if that happens to be the Applicant—is the party with whom the Third Respondent, the City Council of Johannesburg, entered into a contract.

I come then to the second prayer. Counsel of the First and Second Respondent suggested that there is only one question, and that is, whether the Applicant is the lessee. For the reasons I will indicate, that is to my mind not a correct or the only approach to the matter. I will approach it along the lines: whether the Respondents have any rights as lessee, or derived from a lessee: and secondly, whether the Applicant has sufficient *locus standi* to rely on any absence of rights as may be present.

Here again the Court must take notice of the fact that the papers—and I am starting with the Discipline of the Church—do show some confusion of thought. The Respondents, for instance, say (at pages 29 to 31) that a certain Temple was a member of A.M.E.C. and was breaking away from A.M.E.C. Now, a Temple—whatever meaning that word might have—cannot be part of a religious gathering; cannot be a professing member of a church. The Discipline makes no allowance for that. Only human beings can come within that grouping of membership, and they, of course, may be grouped into other bodies corporate, or function in that form. The Discipline, in turn, is not always consistent. One notices, for instance, the word "church" being used sometimes with a

capital letter, sometimes with a small letter, sometimes apparently to refer to the local church, sometimes apparently to refer to the whole unit which is generally called A.M.E.C. by everybody. At page 201 one finds a reference which, to a lawyer, would not be very impressive, of property owned by the people. A lawyer would tend to talk in terms of property owned either by the Church, as such, or by some body corporate which is part of the workings of the Church.

It means, then, that the Court has to come to a conclusion by interpreting that which was in fact written. I have also taken notice of the evidence, but I think that the evidence in so far as it is admissible is not of such a nature as to be able to contradict what is explicity said in the Discipline.

There has been some argument as to whether the local Church, or the Trustees of the local Church, can own property. The question may well arise—and I take that into account —whether a local Church is an incorporated body, in other words, whether, as the lawyers would call it, it has legal personality; or alternatively, whether it has powers or functions to deal with property. Here again, on those questions it is not the views of third parties which is determining. One must look basically at the Church Discipline. Accordingly, the views of the West Rand Administration Board, or the City Council of Johannesburg, cannot influence the issue except only in one sense, and that is when it comes to the question of with whom the City Council of Johannesburg intended to contract, or thought it was contracting.

Similarly—and this comes to one of the first legal issues—whether the Applicant has *locus standi,* as the lawyers would call it, and whether the Applicant has sufficient interest in the matter. It must be realised that a lessee, and also then the lessee of this property, cannot expect the authorities to intervene on its behalf, or to protect its rights. A lessee or that body which operates on behalf of the lessee, such as a board of directors, is the only person who can and must act against unlawful interferences by third parties, and in this case then, unlawful occupation of property by third parties. Accordingly, I

make no further references to the Johannesburg Municipality or the West Rand Administration Board or the Soweto Council. This is truly a civil dispute between the two groups concerned to ascertain who, if anyone, has rights to this property.

I want to come back to the question of whether the local Church can own property. I think there are several indications that a local Church can own property. There are references to local church property in headings, and otherwise; there are words which describe how local church property should be dealt with; local trustees are appointed who have duties as custodians, duties as managers of the property, and also a duty to turn opportunities to the best advantage, all in the interests of the Church. There are several lesser indications. I can refer to page 201 of the Church Discipline, at pages 147, 149 (in particular item 45), and 164. There are also minor indications that the Church has property, and this must be reflected on statistical forms. But all this seems to make little difference to the end-result. If the local Church was not a body corporate, or did not have legal personality, then if the Rev. Rajuile, or he on behalf of the local Church, obtained any rights, those rights vested not in the local Church, but either in the central Church (A.M.E.C.,) or in the Western Transvaal Conference. I again ignore the other intervening bodies. If, then, there is no body corporate, then the Second Respondent and the First Respondent, from the nature of things obtained no rights because the only rights that were ever obtained vested—in other words, it accrued to—as I said, A.M.E.C.; or the Western Transvaal Conference.

Once those rights came to land at that place, those rights could not be simply deprived of by people walking away or walking out. Perhaps things may be clearer if I were to tell the Respondents—and I am only dealing with the one possibility now—that it somehow reminds one of the person farming with grapes. A.M.E.C. (the farmer) has 18 vineyards. The various plants growing there each have bunches of grapes. Each local church is like one bunch of grapes. It is tied to the parent body by a stem, but that stem cannot be taken away without the

consent of the parent body. If members resign, they are like grapes falling off. If one falls off, the other remain; if ten fall off, the other remain. One, or two, or ten, or fifty members cannot break off the ties that grew through past history.

I come to the second alternative, and that is, if the Church is a body corporate. Here again, one can think of the example of the grapes, or perhaps another example. The various Conferences—in other words, local Churches—are like the coaches of a train, they are tied to each other; they have taken a direction set out by its creed, by its philosophy, whether it is episcopal or congregational does not matter, but that train has taken a direction, and the discipline ties all those coaches to one another. Now, if that train comes from Johannesburg to Germiston, and the train turns north, and the passengers who do not want to go north get off, then the coach is still a part of the train. The local Church is the coach; the individuals are the passengers in that coach. If they resign, if they secede, if they die, if they go away, they get off the train, but the coach goes on with the train. If that local church obtained rights, they are rights which accrued to the coach, not to the passengers on the train. Passengers vary; some get off; some get on; some die; some get born; some resign; some join. The passengers vary, but the rights are limited to the coach.

Whatever has happened here, it is clear to me that the Second Respondent and the First Respondent are like the *passengers in the coach.* There has been some argument as to whether all members of the local Church unanimously left, but the evidence has made it clear that it was not unanimous. Some passengers remained in the coach, or some grapes remained on the bunch.

There was some argument about the validity of transfer. There were some differences in the manner of reference to certain things. But what is clear—and this was accepted by both advocates, and they were right to do so—is that what happened here is that certain members broke away; they seceded. They started—and they say so in so many words—

their own church, which is a new church. They built a different coach to travel on. If they do that they leave the old coach with whatever rights it has.

It simply means this then in practical terms, that the Second Respondent, when it was created, could by no means take over that which belonged to the local Church or to the higher authorities of A.M.E.C. There is no legal basis upon which they could simply take away property of another body and take it with them. To put it in more legal terms, one might refer to the decision of *Dwane v. Ghoza*, 1902 E.D. 8. I am convinced that the First Respondent and the Second Respondent could not take the contractual rights as a lessee with them; they are not the lessees at the moment, they have not the right to occupy those premises.

What remains is a very technical area. The law must decide how practical it is, or how strictly it applies other considerations and, nevertheless, be an equitable Court.

There was a reference to the *Congregation of the Oblates of Mary Immaculate of the Transvaal v. Maluhele*, 1949 (3) SA 885 (T). I quite frankly prefer the approach of the other Eastern Districts case, *Ethiopian Church v. Sonyika*, 1926 E.D.L.D. 112. It is true that Applicant's counsel said that he relied not on this case, and in fact, was not relying upon contract but upon delict. To my mind, the fact that in the *Ethiopian Church* case 1926 the cause of action was delictual, does not imply that this case is necessarily of the same quality. It was also said that the Applicant was relying upon a "breach" of real rights. A lessee can have, and frequently has, real rights. It arises not by virtue of the lease, as such, but by virtue of possession pursuant to a lease. Even if that be absent, a lessee still has rights which he can enforce.

Now, if one looks at the general relationship between these parties, it is to me quite clear—and I refer in particular to page 40 of the Discipline—that properties of the nature with which we are concerned in this case, if they are acquired must be so acquired "so as to firmly secure the premises to the African

Methodist Apiscopal Church". The duty of the local Church Council's trustee were to act in such a manner that it is secured for the Church, as such. It must not be secured for the members for the time being of the congregation.

One gets throughout the Discipline a pattern of the local members, trustees and stewards, acting in the interests of the wider Church. They are bound to do so, and one can accept that they would ordinarily have done so. Even those actions are largely dependent upon approval or authority from higher up in the Church. The supervisory authority, extends to a very high level (I refer to page 44 of the Discipline) and runs through to a much lower level. But it is clear that at least some extent of residual powers are spread to the higher level. In this context I think I should particularly stress, at page 42, the authority of the Church at higher level to look after abandoned Church property.

It seems to me that one must accept on the facts which have been put before this Court, and those facts that have not been disputed, is that what happened here is that the members of the local Church, the local Conference, changed the "flag of their ship" in such a fashion that there was no captain, or vice-captain, or other people left to look after the property in the fashion in which the Discipline requires local members to look after property of the Church, the Annual Conference, or the local Church. It may not be technically abandoned property, in the legal sense, but the fact is that there is nobody—according to what has been displayed to the Court who in fact is taking an interest in seeing to it that the Church is used for A.M.E.C. purposes and not for the purpose of the Second Respondent. But there is no one left who can enforce the rights of A.M.E.C. and its various branches and members to this lease. To my mind, A.M.E.C. and its Western Transvaal Annual Conference as being the local body of authority have a sufficient interest in those circumstances (and then in the present matter in particular) to come to court to say that the Second Respondent and the First Respondent have no right to be on the premises. That is quite clear. In other words, the Court should listen to the Applicant—whoever it may be exactly—to ask for the ejectment of the two Respondents.

It seems to me, as far as the last aspect is concerned, that I must look at the initial resolution. To ascertain who came to Court, the resolution attached to the papers at page 16 speaks for itself. If one looks no further, it is the Western Transvaal Annual Conference that came to court, conceivably bearing the name A.M.E.C. on its banner. I have indicated that that body, being a juristic person is, alternatively, at least a functioning body with sufficient interest in the present set-up to come and ask the Court for an order in terms of the second prayer. It follows then, in view of what I have already said, that the Court should at least grant an order in terms of payer (b).

In the circumstances, the Court grants an order in terms of prayer (b) and prayer (c), as far as the latter is concerned, with the exclusion of the costs that I indicated at the commencement of this judgment.

After the judgment was given, counsel for the Applicant asked that the employment of two counsel be allowed. One factor mentioned was that the Respondents have been in unlawful occupation for three years. Most of the time there was unnecessary correspondence asking the Soweto Council and the Johannesburg Municipality, etc, to interfere. This case could have come to court earlier and, in any event, the costs of two counsel should not be used as a penalising measure.

As far as the other questions are concerned, that the matter is of importance, and having regard to the degree of difficulty and, obviously also, looking at the general context of the papers and the wisdom of the parties to provide by way of using two counsel, to my mind this is not a case where two counsel should be authorised. That rider to the costs order is accordingly not granted.

MR. TUCHTEN APPLIES FOR LEAVE TO APPEAL

The Respondents, through their counsel, ask for leave to appeal. The grounds are the following: that another Court may come to a different conclusion on the approach to the matter, viz. that as was ordered by the Court, when referring of this matter for the hearing of oral evidence, there is only one question and that is, who the lawful lessee of the relevant premises is.

Secondly, that this Court erred in finding that the American Methodist Episcopal Church (the "Applicant") had any *locus standi.*

Thirdly, this Court erred in finding that any contract between Applicant and either of the Respondents came into being.

Fourthly, this Court erred in finding that anybody other than the Orlando West Circuit, alternatively, members of the Orlando West Circuit had any rights in respect of the property 1101 Mampuru Street, Orlando West.

Fifthly, this Court erred even in the non-technical sense of finding the property to be adandoned property, alternatively, if it is, in finding that the rights would vest in the Western Transvaal Annual Conference as a juristic person, and not in the Applicant.

I should add that the reference by the Applicant in a fifth ground of appeal was stated by counsel to be a reference to the American body corporate.

These grounds of appeal were verbally formulated and conveyed to the Court. Obviously then they are perhaps not in the finest detail and the fashion which a party would ordinarily phrase them had he had sufficient time, nor is my version thereof an exact verbatim reflection of what was said to Court, but I believe the substance is accurately conveyed.

On behalf of Applicant it was intimated that the application is opposed, but counsel was not called upon.

I will deal with the grounds to indicate respectively what my views on each are. Firstly, the Court, in referring the matter for the hearing of evidence, did not decide that there is only one question. It decided that there is one question which could not be decided on the papers and which required verbal evidence. I would also note in this context that it is noticeable that none of the grounds of appeal—and I think quite rightly so—purports to find any reason why the First Respondent or the Second Respondent could conceivably have taken over contractual

rights or real rights which vested in the ex (if that be the case) local Church of A.M.E.C. in Orlando West. I do not think that the fact that another Court might have thought it advisable or necessary to hear oral evidence, despite the views of counsel that the matter could be decided on the papers, to be a reason to think that, as such, and without more, another Court will differ from my conclusions on what was put before me.

Secondly, the finding that A.M.E.C.—as counsel said, the Applicant—had any *locus standi,* calls for this comment, that I think I did try to intimate that there is some difficulty about who the Applicant really is. The finding is really—and if I did not express that clearly, I should rectify that—that whether it is the American body or the Western Transvaal Annual Conference, each or any of those bodies has sufficient *locus standi.* It, accordingly, matters not who the applicant is, except when it comes to the issuing of a warrant and the taxation of a bill of costs. What is clear is that the Respondents have no right to those premises and they must get out. I have no reason to think that another Court will come to the conclusion that the Respondents have rights, (and as I have said, that is not a ground of appeal) or to find that neither the American body, nor the Western Transvaal Annual Conference, has any rights to enforce the residual interests of the Church or its local congregation in this specific property, if it concerns real rights, or in the contractual rights, if it concerns that aspect.

Thirdly, it is quite true that there is no contract between Applicant, as such, and the Second Respondent, who is a new creation, who never contracted. The First Respondent, and other members of the local congregation, were in a sense bound towards the Applicant—again, irrespective of whether it is A.M.E.C. or the Western Transvaal Conference—by the contract which is innate in the Church Discipline. Through membership, certain obligations arose. As a matter of convenience, I see no objection against calling that "contractual" rights, because it has a clear consensual underlay.

The whole question of contracts is not of the essence of the matter. Again, the Respondent have no right to those properties. The question of contract only comes into the area of

whether the Applicant has sufficient *locus standi.*The conlusion of *locus standi* mentions the question of the relationship created by the Discipline as a factor, but contract is not the only yardstick of *locus standi.*

Fourthly, the conclusion that is said to have been reached is that anybody other than the Orlando West Circuit (or the members of that circuit) have any rights in respect of the property. Again, one must remember that one deals not only with real rights, or perhaps not even mainly with real rights, but with the rights of a contractual nature created by a contract of lease. The essence of the matter is, again, not to ascertain that anybody had rights in respect of the property. It is sufficient for the Applicant, on the second prayer, to succeed to find that the Respondents have no such rights, and that the Applicant has sufficient *locus standi* to get the Respondents out of the property.

As far as the last ground of appeal is concerned, the qeustion of abandoned property, or the appellations allied to that, should be seen in the context in which I referred to them. The provisions of the Church Discipline with regard to abandoned property was referred to as a further indication of at least a residual interest of the Applicant, whether it be the American body or the Western Transvaal body, in Church property acquired at the local level. It does not constitue a finding except only in this limited sense perhaps, that I have indicated that the evidence, to my mind, conveys that the secession was, from the point of view of effectiveness, of such wide impact that there is reason to think that nobody remained, at a local level, to take occupation, to enforce ejectment, or to take similar actions, if they were entitled to do that, despite not having been elected to boards of trustees, etc., and that basically, in those factual circumstances, a body such as the Applicant, with such a residual interest, has sufficient *locus standi* to come to court. *Locus standi* is frequently created by a contract, it is not solely dependent upon that. Real rights and contractual rights frequently only give interest of sufficient nature to come to court to one party. It is not necessarily so.

To my mind, there is no reason to think that there is a sufficient prospect of another Court coming to a different end-conclusion. I should add that in the process of arguing the matter, counsel in the initial stages said that this Court correctly found that there was no real right. It may be that there are real rights. I need go only as far as to decide whether there is an adquate basis for the Applicant to succeed. I found that to be adequately present, in other words, to lead to success for the Applicant without being dependent upon further factual findings about real rights, delicts, tauts, and the similar.

It may then be that another Court, even if it should have some qualms about what I have said, will have to consider further additional grounds why the Applicant should not succeed, in any event. There is some substance in additional grounds. I would limit myself, however, by deciding only on what I have already decided, and that is to the effect that I see no reasonable prospect of another Court differing in the end-conclusion or from the reasons I have stated.

For those reasons, the application for leave to appeal is dismissed with costs.

IN THE COURT OF COMMON PLEAS—
FAIRFIELD COUNTY, OHIO

Case No. 50326

BOARD OF TRUSTEES OF THE ALLEN CHAPEL
OF THE A.M.E. CHURCH,
Plaintiff,

vs.

BETTY J. GROGRAM, *et. al.,*
Defendant.

PLAINTIFF'S MEMORANDUM CONTRA DEFENDANTS' MOTION TO DISMISS AND PLAINTIFF'S TRIAL BRIEF

STATEMENT OF FACTS

The African Methodist Episcopal Church (hereinafter A.M.E. Church), in one of the oldest Methodist societies in America and was founded by Bishop Richard Allen, who, along with his contemporary, Bishop Francis Asbury of the Methodist Episcopal Church, is generally credited with planting the seeds of Methodism in American soil. From its early origin in Philadelphia, Pennsylvania, in 1786, the A.M.E. Church was formally organized as a denomination at Baltimore, Maryland, in 1816 and has since spread throughout the western hemisphere and into Africa.[1]

There are presently eighteen (18) Episcopal Districts, each under the supervision of a Bishop (*Discipline*, at 417-418), who

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[1] R. Ransom, *Preface to History of A.M.E. Church* (A.M.E. Sunday School Union 1950); G. Singleton, *Romance of African Methodism* (Exposition Press 1947); *The Book of Discipline of the African Methodist Episcopal Church*, at 237-249 (A.M.E. Sunday School Union, first published in 1817, copyright 1976, portions of which are attached hereto and incorporated herein by reference and are hereinafter throughout the text of this memorandum referred to as the *Discipline*).

is elected by the supreme governing authority of the denomination, the General Conference (*Discipline,* at 203-212, 213-231). The General Conference meets quadrennially and is composed of the Bishops, various ecclesiastical officials, church officers, A.M.E. College Presidents, and lay delegates (*Discipline,* at 213-231). The laws, discipline, and polity of the Church are adopted by the General Conference and are known to the faithful through the official publication called *The Book of the Discipline of the African Methodist Episcopal Church.* The Hierarchy of the A.M.E. Church is further divided as follows: Each Episcopal District is divided into several Annual Conferences, over which the Bishop for the Episcopal District presides and which meet, as the name suggests, annually.[2] Membership of the Annual Conference is composed of ministerial and lay delegates from each local church within the Conference (*Discipline,* at 232-251). The geographical area of each of the Annual Conferences is, in turn, subdivided into Presiding Elder Districts (*Discipline,* at 249-251). At the Annual Conference, the Bishop appoints the Presiding Elders as well as the pastors for the various local churches within the districts, again on an annual basis as the name implies. Also at that Annual Conference, assessments are levied for the support of the church against the local churches, the local churches report on their activities and finances and other related matters are transacted (*Discipline,* at 232-237). The local congregation in controversy, The Allen Chapel A.M.E. Church, Lancaster, Fairfield County, Ohio, is in the Third Episcopal District, the Ohio Annual Conference, and Bishop Vinton R. Anderson is the presiding prelate of that Annual Conference.

The A.M.E. Church has an internal judicial system with Ecclesiastical Courts and Tribunals to adjudicate the rights and complaints of any member of the church body in the Connection (*Discipline,* at 68-73, 259-279). Church judicial officials and A.M.E. Ecclesiastical Courts have powers and procedures in interpreting the *Discipline* for the church, so that the

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[2] Extra sessions or special sessions may be called only for the purpose of deciding important questions on property rights concerning the Annual Conference or the connection or for calls of extra sessions of the General Conference (*Discipline,* at 232).

Judicial Council may affirm, modify or reverse a decision or ruling made by a Bishop, subject to the approval of the General Conference, assuming that an appeal is taken from a decision of a Presiding Bishop. (*Discipline*, at 71-72)[3]

Historically, new local congregations have been brought into existence in one of two ways: By missionaries from a Presiding Elder District sent out by the Church into an area to recruit members for a new local church body; or by a group of persons petitioning a Presiding Elder District Conference which in turn presents the potential members to the Annual Conference which has the authority to approve a petition for organizing an A.M.E. Church. The A.M.E. Church does not affiliate pre-existing church associations into its Connection and a local church is, among other things, an administrative unit of the General Church, which is established by the General Church and under the direct authority and supervision of officials appointed by the Church (See *Discipline*). The discipline, polity, practice, custom and usage of the A.M.E. Church does not and has never regarded a local church as an autonomous unit independent of the general church that can "withdraw" from the Connection in any manner whatsoever (*Discipline*, at 169-160). Persons are officially received into the local A.M.E. Church according to a set of guidelines by which they become members of the denomination, and upon their oath to accept the duties and responsibilities of membership, they are granted the rights and privileges of that membership in the Connection (*Discipline*, at 91-93, 157-158). As part of the Order for Receiving members into the church, the potential member must swear allegiance in part as follows:

Question 5: Will you cheerfully be governed by the Discipline of the African Methodist Episcopal Church, hold sacred the ordinances of God and endeavor as much as in you lies to promote the welfare of your brethren and the advancement of the Redeemer's kingdom?

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[3] Attached hereto and incorporated herein by reference is a schematic of the "Organization of the African Methodist Episcopal Church, 1980 to 1984" depicting the General Hierarchy of the church.

Answer: I will.

(Discipline, at 93)

Individual members only may either transfer their membership or terminate their membership according to prescribed methods contained in the *Discipline (Discipline,* at 158-160). A local church or local congregation cannot by majority vote or otherwise, disassociate itself from the church, in other than the prescribed method by which individual member of the congregation could terminate his or her membership.

The congregation of the Allen Chapel of the A.M.E. Church was organized in Lancaster, Ohio, in the 1860's and became affiliated with the Connection thereafter. Having built the Allen Chapel A.M.E. Church building, the City of Lancaster gave its deed *in trust* to the trustees of the A.M.E. Church on or about October 28, 1889. The property has been held in trust for the benefit of the A.M.E. Church since that time. Throughout the period 1889 until October 26, 1980, the congregation of the Allen Chapel A.M.E. Church has consented to and submitted to the absolute control of the general church, by which system the clergy at the Allen Chapel A.M.E. Church has been appointed annually and from whom the approval for remodeling and building programs was obtained, as will be shown further by testimony elicited at the hearing of this case. Additionally, Allen Chapel A.M.E. Church sent delegates annually to the Ohio Annual Conference and participated in all stages of the National Government Organization, while following the prescribed procedures identified in the *Discipline.* The Annual Conference publishes yearly a journal and yearbook of their annual sessions which indicate the activities which took place during the Annual Conference, the assignments made of ministers, statistics about each church building and financial information.[4]

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[4] Attached hereto and incorporated herein by reference are the cover page and a page of statistics concerning Allen Chapel copies from the 1943 Journal and Yearbook of the 113th Annual Session of the Ohio Conference of the A.M.E. Church. Plaintiff intends to introduce into evidence, if necessary, all of the yearbooks from 1943 to the present which will establish in an unbroken record of attendance by delegates of the Allen Chapel A.M.E.

(footnote continues)

On or about October 8, 1980, the Ohio Annual Conference took place in Cincinnati, Ohio. At that time, Reverend W. H. Harris was appointed and assigned by the Presiding Bishop to act as pastor at the Allen Chapel A.M.E. Church in Lancaster, Ohio. On or about October 26, 1980, Reverend Harris arrived at the location of the Allen Chapel A.M.E. Church building at 215 East Walnut Street, Lancaster, Ohio, and was denied access to the building and was further denied the right to perform his pastoral duties by the defendants. (See Affidavit of Reverend W. H. Harris attached to plaintiff's motion for preliminary injunction.) These defendants have continually denied Reverend Harris and the other trustees of the Allen Chapel A.M.E. Church the right to enter upon the real estate which they hold in trust for the A.M.E. Church.

ARGUMENT

I.

The issue before this Court is a fairly narrow issue which can easily be determined upon guidelines firmly established by both Ohio and Federal case law. Some of the information alleged to be dispositive of the case by the defendants is absolutely irrelevant to the analysis which this Court must make.

Plaintiff certainly acknowledges that the State has a legitimate interest in the orderly, peaceful resolution of any property disputes which arise within its jurisdiction and that civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. See: *Presbyterian Church in the United States v. Mary Elizabeth Blue Hall Memorial Presbyterian Church,* 393 U.S. 440, 89 S. Ct. 601 (1960). Where, however, a church faction wishes to break away from the national church and factions of each are before

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(footnote continued)

Church, as well as their continuing participation in the general government of the church, payment of contributions to the conference, receipt of assigned clergy annually, the supervisory jurisdiction of the conference over the local churches, all of which will show the continued loyalty and dedication to the General Church by the Allen Chapel A.M.E. Church congregation throughout the years as well as their subordinate status.

the civil court, as here, there is a substantial danger that the powers of the State, through its Courts, could be used inadvertently to interfere on behalf of a group expousing particular doctrinal beliefs. Because of this danger, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. See: *Serbian v. Eastern Orthodox Diocese, etc. v. Milivojovich,* 426 U.S. 696, 707, 96 S. Ct. 2372, 2380 (1976). In decisions relating to church property, therefore, civil courts are required by the First Amendment to refrain from becoming entangled in or taking sides in matters concerning competing views of doctrinal theology, belief and/or faith. See: *Jones v. Wolf,* 443 U.S. 595, 99 S. Ct. 304 (1979). By and large, civil courts have, therefore, accepted the property decisions of the religious organization as conclusive where those decisions are based upon a body of ecclesiastical law which predominates through a book of discipline or collection of precedent, custom and/or usage. See: *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 20 L. Ed. 666.

Completely dispositive of this case is the undisputable fact that the A.M.E. Church is and has always been a heirarchial, connectional church structure with subordinate local church bodies that are subject to the authority of the General Church.[5] The analysis concerning whether or not a church is heirarchial

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[5] Contrary to the conclusion of the courts below the structure, role, and authority of a local A.M.E. Church is substantially different from that of a local Presbyterian Church as described by the U.S. Supreme Court in *Jones v. Wolf.* As *Jones* points out, 90 S. Ct. at 3025-3026, the structure of church organizations vary. In the instance of a Methodist Episcopalian structure, by virtue of the "method" of Methodism, local A.M.E. Churches are not autonomous, independent bodies as they might appear to uninformed eyes. Each local church is brought into existence by the Connectional Church and subject to the discipline which controls all internal affairs of the congregation. For examples: The local Board of Trustees may buy, transfer, or mortgage, property but only upon the approval of the Pastor, who is mandatory Chairman of the Board (*Discipline,* at 163) appointed by the Bishop (*Discipline,* at 209-210). Local incorporated property may be sold but the proceeds must be held in trust for the A.M.E. Church (*Discipline,* at 60). The signature of the Pastor appointed by the Bishop is necessary to validate acts of the Board of Trustees (*Discipline,* at 163). The Pastor may appoint a Chairman pro-tem of the Steward Board but actions approved by the Board in his absence are subject to his veto (*Discipline,* at 160). Any transfer of

(footnote continues)

and connectional or congregational is most ably handled in a Fairfield County case, *Ohio Southeast Conference of Evangelical United Brethren Church v. Kruger,* 17 Ohio Misc. 8, 46 Ohio Op. 2d 10, 243 N.E. 2d 781 (Fairfield CPC 1968). The Common Pleas Court citing *Watson v. Jones, supra,* gives the following definitions:

> When the property is held by a religious congregation which by the nature of its organization is strictly independent of other ecclesiastical associations and so far as the church government is concerned owes no fealty or obligation to any higher authority, it is a congregational church.
>
> Where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization, in which there are ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization, it is a connectional church.
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> (17) Ohio Misc. at 14-15)

The criteria by which this fact determination is made has been discussed in many cases, and is considered additionally at 47 Ohio Jurisprudence 2d, Section 3, pages 275 and 276 which suggest that the trier of fact consider:

1. The records kept of conventions.
2. Records kept of conferences.
3. Church manuals or Disciplines.
4. Handbooks for conferences or conventions.

(footnote continued)

property requires the approval of Connectional Church supervisory bodies and officials (*Discipline,* at 60).

The A.M.E. Church, consistent with Ohio law, allows and encourages its local churches to incorporate. But whether incorporated or not, the local A.M.E. Church acts as agent of the Connectional Church, pursuant to a carefully supervised mandate. A local A.M.E. Church under the terms of the *Discipline* is autonomous and independent of the A.M.E. Church only in the same limited sense that the fingers are autonomous and independent of the hand.

Additionally in *Kruger,* 17 Ohio Misc. 8 at 15 and 16, the Common Pleas Court suggests analysis of several items which lead the Court to the conclusion that the church was connectional and heirarchial in that case some of which are:

1. The local church consented to and submitted to the control of the superior General Church.

2. The assignment of clergy was made by superiors at the Annual Conference.

3. The local church sent delegates to the Annual Conferences.

4. The local church secured approval for its remodeling and building programs from the National Church.

5. The local church was loyal and dedicated to the National Church in that case for 68 years.

6. The Southeast Conference had supervisory jurisdiction over the local church.

7. The Bishop of the Southeast Conference appointed the elders and other government officials of the church.

All of these are indicia of the local church being subordinate to the National Church.

In the instant case, each and every defendant who had been a member of the A.M.E. Church participated in a formal ceremony by which they were received as members of the church. This ceremony is delineated in the *Discipline* at pages 91-93 and includes a voluntary acceptance of the rules and procedures governing all church activities as declared by the *Discipline.* Each of the other criteria are fulfilled in this case by factual proof showing continued local participation in the national conferences, the national government, the following of national procedures, the long-term affiliation and the general supervision from above.

The plaintiff will and has already to this point shown that the A.M.E. Church is a hierarchial and connected church having a well organized general and national church organiza-

tion with control resting in a body in charge of the overall membership. The Allen Chapel A.M.E. Church has been a member of this Hierarchy and has been connected to the general A.M.E. Church for well over one hundred (100) years participating at every level of the Hierarchy up to October, 1980.

II.

Once this status of the church has been established as here, the analysis must turn to the legal ramifications of the property where, as here, specific words of trust are placed in the deed of transfer. Since this church is a part of the Hierarchy it cannot divorce or separate itself from the general church, it cannot set up a new independent organization by which it would seek to retain the ownership of the local church property. As stated by the United States Supreme Court in *Watson v. Jones, supra:*

> In cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its order and judgment.

In no event can the members of a local congregation utilize the property in a manner foreign to the principles, customs, and rules of the church to which it has been conveyed, even though a majority or the entire congregation express their approval of such action. Neither can it, nor a majority of its members, sever its connection or separate itself from the ecclesiastical body by and through which it was endowed with faculty, which enabled it to organize as part of the church family, subordinate to the given authority of the church and its laws. Even a majority faction in a local body of a Hierarchial church has no legal right to divert local property to purposes other than those for which it was established. In such cases, the minority of the congregation, adhering to the rules, discipline, regulations, canons and usages of the general church organization will be entitled to the ownership, use and control of the property. See: *Watson v. Jones, supra, Jones v. Wolf, supra,* and *Kruger, supra.* See also 45 American Jurisprudence, 777, Section 68 which states as follows:

> Section 68. Connected Bodies. In case of a controversy raised by a schism or division as to rights in property acquired for the general use of a religious congregation which is itself part of a general organization of some religious denomination with which it is more or less intimately connected by religious views and ecclesiastical government, the question of identity is again the criterion in determinating which faction is entitled to the property, and is again to be decided by ascertaining which of the two factions adheres to the governing body of the society. The governing body of such a society is generally some external organization to which the local church is subordinate; hence, the application of the criterion of identity in this class of cases calls for adherence to or sanction by such external organization, irrespective of the action of the majority of the local body; for while there can be no doubt of the right of individuals to withdraw from a religious society of which they have been members and to form a new society with such ends and government as they please, they are not endowed with the right of taking with them property consecrated to other uses.

In addition, the A.M.E. Church meets the requirements of the "per se rule" announced in *Jones v. Wolf, supra.* In that recent case, the United States Supreme Court stated that "civil courts [may] examine certain religious documents, such as a church constitution, for language of trust in favor of the general church." The civil courts are "bound to give effect to the result indicated by the parties, provided it [trust language] is embodied in some legally cognizable form" (Brackets added). 99 Supreme Court, at 3026 and 3027.

Explicit language of trust in the governing document of the A.M.E. Church (*Discipline*) showing the intent to conform to General Church authority over property in the control of its local churches and other subordinate departments and auxiliaries, is contained initially in the statements of purpose in the A.M.E. Church corporate chapter:

> . . . That the further purpose of this [Church] Corporation is to invest in the Board of Incorporators referred to in the Book of Discipline of the African Methodist Episcopal Church, sufficient power and authority in all fiscal matters as well as all property rights of said African Methodist Episcopal Church so that said Board may have as the representative of the aforesaid Church competent legal representatives in all matters and things wherein the property rights and other interest of the aforesaid Church should be protected and guarded, including all property, title to which is vested in the African Methodist Episcopal Church, its Auxiliaries, Departments, and Societies, and for the purpose of the African Methodist Episcopal Church as expressed in its Book of Discipline and these Articles of Incorporation. The Board of Trustees in the said Book of Discipline herein above referred to is made amendable the General Conference of the said African Methodist Episcopal Church under the terms set out in said Book of Discipline (*Discipline,* at 51-52).

The charter later states:

> The [Corporation] is the owner of several properties located throughout the United States, Africa, the British West Indies, British Guiana, French and Dutch Guiana, Haiti, Bermuda, and the Dominican Republic and the nature of churches, episcopal residences, and buildings housing the various church departments and activities. The title of the properties in many instances is in the various subordinate churches, departments, auxiliaries, societies, and associations, all being strictly used for the purpose for which the African Methodist Episcopal Church was organized . . . (*Discipline,* at 53)

In addition to the foregoing provisions the *Discipline* explicitly sets out the intention to create an agency role for the local church with powers subordinate to the General Church

relative to local property. For examples: The Board of Trustees elected by the local church may transfer property, real or personal, but only upon the approval by resolution supervised by a Presiding Elder of the Quarterly Conference (*Discipline,* at 250-253) and by resolution of the Trustees of the Annual Conference in which the property is located and of which the Presiding Bishop is President (*Discipline,* at 60); when property has been incorporated, the local corporation is granted power to sell, convey, or otherwise dispose of property upon approval of the Quarterly Conference. However, the proceeds of such sale must be held in trust for the African Methodist Episcopal Church or disbursed for another improvement of such properties owned by the A.M.E. Church or to be purchased by it (*Discipline,* at 60); the local Board of Trustees may mortgage or encumber church property upon authorization of a majority vote of the Church Conference (*Discipline,* at 61), approved by the Pastor appointed by the Bishop whose signature as Chairman of the Board of Trustees (*Discipline,* at 163).

The plaintiff contends that the defendants are without relief since they cannot leave the A.M.E. Church and present themselves to this Court as an unauthorized, unorganized group of individuals claiming real estate interest in property, the deed to which sets forth specific trust language for the benefit of the A.M.E. Church. The defendants including the Allen Chapel Church were not parties to the instrument, are not a part of the A.M.E. Church and have no standing to raise legal or equity interest claims on the real estate which is the subject of this action.

CONCLUSION

For all of the above stated reasons, therefore, the plaintiff respectfully urges this Court to overrule the defendants' motion to dismiss and set this matter for trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Plaintiff's Memorandum Contra Defendants' Motion to Dismiss and Plaintiff's Trial Brief has been mailed to Jack Supman, Esq., 124½ West Main Street, Lancaster, Ohio 43130, as attorney for the defendants, this 16th day of September, 1981.

R. M. STEIN

R. M. Stein

FILED
AUG 22 1984
ALEXANDER L. STEVAS,
CLERK

(5)

No. 84-14

In The

Supreme Court of the United States

October Term, 1983

BOARD OF TRUSTEES OF THE ALLEN CHAPEL OF THE A.M.E. CHURCH, ET AL.,

Petitioners,

v.

BETTY J. GROGANS, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This action was originally brought in the Court of Common Pleas by a fictitious Board of Trustees (Pet. App. p. 3). The African Methodist Episcopal Church, Inc. was later joined to the action as a party plaintiff (Pet. App. p. 7).

In 1889 the City of Lancaster, Ohio under the direction of an 1814 real estate dedication deeded the real estate in question to three local residents "John C. Viney, George A. Moss and Louisa C. Strander, as Trustees of the African Methodist Church and their successors and assigns." (Pet. App. p. 2). The giving of this deed culminated the construction of a church on the property in question through the efforts of the local congregation (Pet. App. p. 3). All improvements and repairs to said property were made through the efforts of local residents with no assistance from the Petitioners (Pet. App. p. 5).

At the hearing a copy of the 1980 AME Discipline was admitted into evidence but there was no evidence presented by Petitioners that the AME church was hierarchial in nature in 1889 when the deed was executed or that there was any relationship between the local congregation and the national church at that time (Pet. App. pp. 12 & 14).

On appeal to the Fairfield County Court of Appeals, Petitioners made three assignments of error none of which were styled or argued as Constitutional Questions (Pet. App. pp. 10-15). Even in its notice of Appeal to the Supreme Court of the State of Ohio, Petitioners did not (as required by Rule 1 of the Rules of Practice of the Supreme

Court of Ohio) state that there was a substantial constitutional question. Petitioners first raised a constitutional question in their memorandum in Support of Jurisdiction to the Ohio Supreme Court.

Both the trial court and court of appeals found that the respondents, Betty Grogans, Stanley Carlisle and Mary Ball were the successor trustees to the initial local trustees named in the 1889 deed (Pet. App. pp. 8, 13). This was based on the findings that there were no other adverse local trustees in existence, that there had never been a deed or other form of conveyance from the initial local trustees or their successors in interest to Petitioners, that Petitioners never presented any evidence as to their relationship to the local congregation at the time the deed was executed or the nature of Petitioner's organization at the relevant period of time. Based on these findings and neutral principals of law as required by *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 89 S. Ct. 601 (1961) (hereafter called *Blue Hull Memorial)* title was quieted in respondents.

ARGUMENT AGAINST GRANTING CERTIORARI

Petitioners position contains an irreconcilable contradiction. Throughout this case they have asked the courts to decide this case on "neutral principles" of real estate law but then insist that the court award them the real estate based on their interpretation of the 1980 Book of Discipline of the AME Church. The lower courts in con-

formity with the *Blue Hull Memorial* case have consistently refused to interpret the AME doctrine to determine the ownership question and become involved in doctrinal disputes. The courts have also noted that even if they were permitted to decide this case on the basis of the AME Discipline and church doctrine, Petitioners failed to introduce any evidence as to the nature of that doctrine in 1889 or when Petitioners become a hierarchial church. The 1980 AME Discipline does not contain these matters.

———o———

CONCLUSION

Petitioners are asking the Court to overrule *Blue Hull Memorial* and to intervene and interpret church doctrine. It should also be noted that due to the findings of facts of the lower courts, Petitioners failed to establish their claim in any event thus rendering their claimed constitutional issues moot. For all these reasons certiorari should be denied.

Respectfully submitted,

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